Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

BARCLAYS BANK PLC,
Petitioner,

v.

FRANCHISE TAX BOARD,
AN AGENCY OF THE STATE OF CALIFORNIA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

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BRIEF OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES AND THE GOVERNMENTS OF AUSTRALIA, AUSTRIA, CANADA, FINLAND, JAPAN, NORWAY, SWEDEN AND SWITZERLAND AS AMICI CURIAE SUPPORTING PETITIONER

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INTEREST OF AMICI CURIAE

The issue presented to this Court by Petitioner's petition for certiorari is the constitutionality of the application by the Respondent Franchise Tax Board of the State of California ("Respondent") of the method of corporate income allocation known as worldwide combined reporting ("WWCR") to domestic corporations with foreign parents, or foreign corporations with either foreign par-

ents or foreign subsidiaries. This Court reserved resolution of that issue in 1983 when it considered the constitutionality of Respondent's use of WWCR to tax the income of U.S. based multi-corporate groups.[1]

Determination of that question is of significant importance to the twelve member countries of the European Communities: Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom; and to the Governments of Australia, Austria, Canada, Finland, Japan, Norway, Sweden and Switzerland (herein "the Twenty Countries") and to their future economic and commercial relations with the U.S. The Twenty Countries are the United States' main trading partners, accounting for more than one-half of U.S. trade. Each of the Twenty Countries have a double taxation and/or friendship, commerce and navigation treaties in force with the United States, the effect of which is to forbid the use of WWCR.

Corporate citizens of the Twenty Countries are adversely affected by Respondent's use of WWCR. While claiming to be taxing one corporation's operations in California, Respondent includes in its tax base and apportionment formula its income and property, payroll and sales factors and the income and factors for the worldwide operations of all foreign corporations considered to be conducting a unitary business with it, with no provision for crediting the taxes already assessed upon such income in the foreign jurisdiction in which it was earned.

The Twenty Countries hereby submit this brief *amicus curiae* in support of Petitioners.[2]

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[1] *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 189 n.26 (1983).

[2] Petitioners and Respondent have consented to the filing of this brief *amicus curiae* in letters filed with the Clerk of this Court.

SUMMARY OF ARGUMENT AND ARGUMENT

The Twenty Countries have repeatedly expressed their formal objections to Respondent's use of WWCR as:

(1) contradictory to, and incompatible with, accepted international principles of corporate tax assessment and the purpose of double taxation and/or friendship, commerce and navigation treaties in force between the Twenty Countries and the U.S.;

(2) an impediment to investment and trade with the U.S.[3]

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[3] Protocol to the Convention with France on Income Taxes, signed Nov. 24, 1979, 2 Tax Treaties, (CCH) 2819-23T; Demarche from Italy, President European Communities, on behalf of the Member States of the European Communities, March 13, 1980; Demarche No. 51 from the United Kingdom Embassy, March 25, 1980; Demarche No. 211 from the United Kingdom, President European Communities, on behalf of the Member States of the European Communities, October 30, 1981; Demarche No. 83 from the United Kingdom Embassy, May 18, 1982; Demarche from Belgium, President European Communities, on behalf of the Member States of the European Communities, June 29, 1982; Demarche from Greece, President European Communities, on behalf of the Member States of the European Communities, August 1, 1983; Aide-Memoire from Government of Japan, August 11, 1983; Demarche from Greece, President European Communities, on behalf of the Member States of the European Communities, September 23, 1983; Demarche No. 383/83 from Embassy of Australia, November 7, 1983; Demarche No. 461.20-LJ/hu from Embassy of Switzerland, November 15, 1983; Demarche from the Republic of Germany, November 28, 1983; Demarche EA-14533 from Embassy of the Netherlands, December 21, 1983; Demarche from Belgium, President European Communities, supported by the Member States of the European Communities, the European Commission, and the Embassies of Australia, Japan, Canada, and Switzerland, January 1, 1984; Demarche from Embassy of Belgium, January 25, 1984; Aide-Memoire from Government of Japan, June 6, 1984; Demarche from Ireland, President European Communities, on behalf of the Member States of the European Communities, December 20, 1984; Demarche from the Commission of the European Communities and the Embassy of Luxembourg, August 8, 1985; Demarche from Member States of the European Communities and the Commission of the European Com-

The Twenty Countries have also brought their objections to WWCR to the attention of both state and Federal courts by filing *amicus curiae* briefs. This *amicus curiae* brief is the latest expression of the Twenty Countries' objections to Respondent's use of WWCR.

The Twenty Countries are anxious to have the question of the constitutionality of the Respondent's application of WWCR to domestic corporations with foreign parents, or foreign corporations with either foreign parents or foreign subsidiaries, resolved before more harm is done to their relations with the United States and to prevent the continued double taxation of their corporate citizens.

CONCLUSION

The Twenty Countries ask that Petitioner's petition for certiorari be granted.

Respectfully submitted,

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Dated: August 27, 1992

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